

Appl. No. : **10/541,281**
I.A. Filed : **December 31, 2003**

REMARKS

Claims 1 through 20 stand rejected. Applicant has amended Claims 1, 6, 7, 10, and 13. Applicant has also cancelled Claims 2, 3, 5, and 16 through 20. Thus, Claims 1, 4, and 6 through 15 are pending in the application and are presented for examination in view of the amendments and the following remarks.

Drawings

The drawings were objected to for not illustrating the “straight incisions which extend from said upper edge to the external circumference of the opening and further extend beyond the lower circumferential edge over a length of at least a few mm to about 2 cm” recited in Claim 15. In response, Applicant has amended Figure 1 to illustrate the recited structure. Specifically, Applicant extended the illustrated incision 10 for opening 6 beyond the lower circumferential edge as described in the specification at paragraph [0023]. No new matter has been added.

Applicant notes that the rejection to the drawings was premised solely upon 37 C.F.R. § 1.83(a) and not 35 U.S.C. § 112. In view of the proposed drawing change, Applicant submits that this objection is overcome.

The Specification Has Been Amended

Applicant has amended the specification to add a citation to Figure 1 in paragraph [0023] in conjunction with the amendment to Figure 1. Applicant has further amended the specification to add a comma to paragraph [0023]. No new matter has been added.

Claim Objection

Claims 1 through 20 were objected to under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention with respect to the use of the term “hereafter” in Claim 1. Applicant has amended Claim 1 to remove the term and respectfully submits that the objection has been overcome.

Appl. No. : 10/541,281
I.A. Filed : December 31, 2003

Rejections under 35 U.S.C. § 102(b) and 103(a)

The Examiner rejected independent Claim 1 and dependent Claims 2-4 under U.S.C. § 102 as being unpatentable over U.S. Patent No. 6,068,128 to Gardner. Dependent Claims 5-7, 9, 10, 12-14, 16, 17, and 20 were rejected under U.S.C. § 103 as being unpatentable over Gardner in view of Gates (U.S. Patent No. 6,318,893) or Conrad et al. (U.S. Patent No. 5,062,716). Dependent Claims 8, 11, 18, and 19 were rejected under U.S.C. § 103 as being unpatentable over Gardner in view of Meyer et al. (U.S. Patent No. 6,575,300). Dependent Claim 15 was rejected under U.S.C. § 103 as being unpatentable over Gardner in view of Wilfong, Jr. (U.S. Patent No. 4,995,860). Applicant has amended Claim 1 and cancelled Claims 2, 3, 5, and 16 through 20.

Gardner discloses a foil bag 701 (Figure 7) having openings 129A, 129B for positioning the bag upon a pin support. The bag 701 is provided with slits 733A, 733B, 734B, 734B to reduce the pulling and separation force 710 required to separate an upper portion 201 of the front panel 103 and front gusset portions 111A, 111B from the wicket prongs. The bag is essentially adapted for being manually opened (see col. 5, lines 12 – 15) although pneumatic opening is mentioned.

Amended Claim 1 recites, *inter alia*, “the incision is extending from the upper edge to the said opening, in such a way that an essentially straight continuous incision is provided between the opening and the upper edge.” At least this limitation is not disclosed in the applied Gardner reference. For Example, Claim 7 from Gardner explains that the bag has a discontinuous slit between the support aperture and the top edge of the bag. From Figure 7 in Gardner, the lengths of the slits 733 and 734 appear to be much less than the distance between the respective opening 129 and the upper edge. A foil bag having the structure recited in Claim 1 may be successfully used in a bag opening and positioning packaging machine whereby the probability of failure due to improper opening and positioning is reduced from 5% to 0.01%.

The applied prior art does not cure this deficiency in Gardner. U.S. Patent No. 6,318,893 to Gates is directed towards a bag that when sealed does not wrinkle. While Figures 1 through 7 illustrate incisions in the bag, the incisions are not mentioned in the description and have no reference numbers. Figures 2, 3, 6, 7, and 8 illustrate large, wide incisions. Figures 1 and 4 illustrate small incisions that do not extend to the edge of the tongue 20. The large, wide incisions illustrated in Figures 2, 3, 6, 7, and 8 are likely an erroneous simplification in the drawings. Furthermore, the front flat foil portions of the bag disclosed in Gates do not have “a

AppI. No. : 10/541,281
I.A. Filed : December 31, 2003

number of punched openings in the vicinity of the upper edges of the foil bag to be unfolded, whereby a bundle of foil bags are configured to be supported by a foil bag opening machine having a pin support" as recited in Claim 1. During opening the bag in Gates is supported on the sides by a pair of finger assemblies 40. As a result the front bar portion in Gates cannot be pulled off the pin support to open or spread the bag by keeping the rearward bag portion suspended upon the pin support.

Further, there is no motivation to modify the bag of Gardner to include the incisions from Gates since the finger assemblies 40 in Gates, not the openings 22 that connect to the incisions, "grab and pinch the upper corners of bag 10 to hold bag 10 while it is being opened, filled, and sealed." Unlike the openings 22 in Gates, the openings 129A, 129B in Gardner are used to support the bag during the opening and filling operation. Accordingly, there is no motivation to combine the large, wide incisions in the tongue 20 from Gates with the openings 129A, 129B from Gardner.

U.S. Patent No. 5,062,716 to Conrad et al. is directed towards a staged release bag (See Figure 1) that includes openings in the lower layer 3 and that has no openings in the upper layer 2. The area between the wicket opening 10 and the lower filling edge 6 of the lower layer 3 is provided with a combination of a stabilizing cut 11 and a release path 12. In Figure 5, the stabilizing cut 11 is omitted and the release path 12 is formed from a line of perforations extending from the opening to the edge. The upper layer 2 of the side gusseted bag from Conrad et al. is shown in Figure 4 (See co. 5, line 19 – 21). U.S. Patent No. 3,198,325 to White discloses a foil bag having a line of perforations 68 extending from each opening 67 to the upper edge of flap 60 of the back wall 55 (see col. 2, line 71 – col. 3 line 3 and Figure 6). Both Conrad et al. and White do not disclose or suggest a bag having an "essentially straight continuous incision ... between the opening and the upper edge" as recited in Claim 1.

Therefore, Applicant respectfully submits that the rejection of independent and amended Claim 1 has been overcome.

Dependent Claims

Claims 4 and 6 through 15 depend directly or indirectly from Claim 1 and, thus, are patentable for at least the same reasons that the claim from which they depend is patentable over the applied art. Therefore, allowance of dependent Claims 4 and 6 through 15 is respectfully requested.

Appl. No. : **10/541,281**
I.A. Filed : **December 31, 2003**

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

Any remarks in support of patentability of one claim should not be imputed to any other claim, even if similar terminology is used. Additionally, any remarks referring to only a portion of a claim should not be understood to base patentability on solely that portion; rather, patentability must rest on each claim taken as a whole.

Any claim amendments which are not specifically discussed in the above remarks are not made for patentability purposes, and it is believed that the claims would satisfy the statutory requirements for patentability without the entry of such amendments. Rather, these amendments have only been made to increase claim readability, to improve grammar, and to reduce the time and effort required of those in the art to clearly understand the scope of the claim language.

Applicant has not presented all arguments concerning whether the applied references can be properly combined in view of the clearly missing elements noted above, and Applicant reserves the right to later contest whether a proper motivation and suggestion exists to combine these references.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicants' attorney in order to resolve such issue promptly.

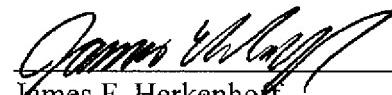
Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: MAY 21, 2007

By:


James F. Herkenhoff
Registration No. 51,241
Attorney of Record
Customer No. 20,995
(619) 235-8550